

**IN THE CIRCUIT COURT OF TENNESSEE
FOR THE NINETEENTH JUDICIAL DISTRICT
AT MONTGOMERY COUNTY**

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 CIRCUIT COURT CLERK

STATE OF TENNESSEE,

Plaintiff,

vs.

BRITLEE, INC. d/b/a The MILITARY
 ZONE a/k/a MILITARYZONE.COM,
 and LAPTOYZ COMPUTERS AND
 ELECTRONICS; STUART L. JORDAN,
 individually and d/b/a BRITLEE, INC.
 and MILLENIUM FINANCE, INC.;
 MILLENIUM FINANCE, INC.;
 and
 ROME FINANCE COMPANY, INC.,

Defendants.

NO. 50500795

Hon. Ross H. Hicks,
Circuit Judge

JURY DEMAND

**ORDER GRANTING SANCTION OF JUDGMENT BY DEFAULT
AGAINST ROME FINANCE, INC. AND OTHER RULINGS
FROM THE AUGUST 11, 2008 HEARING**

This matter came before the Honorable Ross H. Hicks, Circuit Judge, upon the Motion to Compel and for Sanctions Against Rome Finance Company and Ronald M. Wilson brought by the Plaintiff, State of Tennessee. The Court considered this matter along with four additional motions and matters presented by the party as follows:

1. State of Tennessee's Motion to Compel and for Sanctions Against Rome Finance Company and Ronald M. Wilson for Failing to Provide Court-Ordered Deposition Testimony;
2. State of Tennessee's Motion to Compel Deposition of Guy Van Pool;

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3. State of Tennessee's Motion to Clarify and Inspect the Issue of Premises Inspection;
4. Rome's Motion to Limit the Examination of Rome and Ronald M. Wilson;
5. Rome's Motion to Reconsider Portions of this Court's Order of July 2, 2008 and, in the Alternative, Application for Permission for Interlocutory Appeal; and
6. Miscellaneous Rulings in Other Matters.

Upon review and consideration of the pleadings, arguments of counsel, submissions by the parties and exhibits thereto, the Court finds as follows:

1. STATE'S MOTION TO COMPEL AND FOR SANCTION OF DEFAULT JUDGMENT

With respect to the State's Motion to Compel and for Sanction of Default Judgment, such motion is hereby **granted** and the Sanction of Default Judgment is hereby **granted**.

The Court hereby makes the following findings of fact that pertain to and support the Court's ruling on the present motion, as ordered from the bench on August 11, 2008.

(a) Findings Of Fact Supporting Sanction Of Default Judgment

This case was filed by the State back in September of 2005. Essentially the allegations are that the defendants engaged in various unlawful and predatory sales practices and lending practices which primarily targeted military personnel. The issues before the Court pertain to allegations that Rome is in civil contempt for violating the Court's September 23, 2005 temporary restraining order and some later agreed injunctive orders because Rome engaged in unlawful collection activity and other conduct in direct violation of those orders.

It is admitted and has been previously determined that Rome, indeed, did violate the terms of the TRO. And we have been here on numerous occasions dealing with discovery issues that have arisen out of the State's effort to determine the extent to which The Court's previous orders have been violated. It has been determined that the orders were violated and the State has made an effort through discovery to try to find out exactly how many Tennessee cases were involved, what Rome did exactly to comply with or not comply with The Court's previous orders, and which of those Tennessee consumers have been contacted inappropriately by Rome in the course of these proceedings and after the TRO was entered.

In October of 2007, after this Court had found Rome to be in contempt and after this Court had determined on a partial summary judgment motion that Rome's contractual provisions for venue to be in the State of Georgia were unenforceable and illegal, Rome and other defendants removed this case to federal court. That was done at a time when various discovery requests were outstanding, when there had been notices of certain depositions and agreements with respect to discovery proceedings that were to occur. Rome insisted that all such proceedings be held in abeyance while the federal court dealt with that issue.

Judge Wiseman dealt with that issue October 30th of 2007. Didn't take him long to examine that hot horse shoe and determined that Rome had improperly removed this case to federal court and issued the first of what were going to be a litany of sanctions. In his ruling he determined that removal to federal court was devoid of merit and brought in bad faith and for an improper purpose.

Following the return of the case to this Court, the State made several attempts to schedule Rome's 30.02(6), and ultimately the State filed a motion with this Court in November of 2007, a motion to compel and for sanctions, alleging that Rome had failed to provide court-ordered

discovery and was evading its deposition. In December of 2007, the Court ruled that Rome was, indeed, in violation of its earlier discovery – this Court's earlier discovery orders and the Court assessed additional sanctions against Rome, including the requirement that Rome appear for its deposition in the State of Tennessee.

Again, the State made multiple attempts to schedule those depositions. There were various reasons or excuses offered as to why the depositions could not be taken, including a month-long vacation of Mr. Wilson.

On April 14th, 2008, Rome appeared for its deposition. And having read that deposition, The Court concludes that Rome engaged in a course of conduct which led to a prolonged, evasive and fruitless deposition. Numerous improper and unlawful objections, numerous attempts to instruct the witness not to answer questions, numerous lengthy dialogs in which answers were suggested to the witness. As the State points out in its brief, out of the 427 pages of the transcript, Rome's counsel objected, spoke or otherwise interrupted the testimony on 333 of those pages.

At that deposition, although Mr. Moore was present and is counsel of record in this case and was at the time for Rome, Rome's in-house counsel, Mr. Todd, also repeatedly lodged objections and interrupted the record. Mr. Todd, apparently, is not licensed to practice law in this state nor has he ever been admitted pro hoc vici in this case.

After that deposition, Rome filed a motion for a protective order to prevent the State from ever taking Mr. Wilson's deposition. On April 24th, the State filed a notice to take Mr. Wilson's deposition as well as those of Ramona Archer and Jay Kennedy. On April 31st, Rome filed a so-called emergency motion for protective order seeking to block the State from taking any depositions of any of its employees. Two days later, the Court held a telephonic hearing with

counsel with regard to those matters. And, essentially, the Court ruled that because Rome was insisting that those depositions, if they were to be taken at all, were to be taken in Georgia and were to be taken only in strict accordance with the commissioning process, yet Rome was at the same time filing information, responsive information, to insist that those employees were all located at one address in the state of Georgia. It was impossible for the State to comply with the commissioning requirement because of Rome's deliberate actions in this case to withhold information from the State that would have allowed them to have conducted themselves in accordance with the commissioning process.

As a result, the Court sanctioned Rome and found their conduct to be in bad faith. the Court found it to be obstructive of the discovery process, and the Court ruled that the State could proceed with the deposition of Mr. Wilson on May 27th, 2008 as ordered, and that he was to produce all employees for deposition or Rome was to produce all employees that they contended were their employees within the State of Tennessee until such time as it provided information that would enable the State to properly comply with the commissioning process.

On May 12th, the State filed a motion to compel Rome to complete its 30.02(6) deposition. And that motion, along with other matters, was heard on May 27th. My ruling was memorialized in an order of July 2nd. The Court ordered Rome to complete its Rule 30.02(6) deposition and to answer all of the questions, including financial questions, that were addressed in the State's motion.

On May 19th, 2008, the State, once again, filed a motion to compel and for sanctions as a result of Rome's permanent destruction of contempt-related evidence, and on the hearing on May 27th, the Court sanctioned Rome for withholding other contempt-related discovery and, again,

ordered Rome to produce itself and its principal, Mr. Wilson, for deposition which was scheduled for May 28th. That is also a part of the July 2nd order.

At the May 28th deposition, after the parties reconvened after a lunch break, Mr. Wilson's deposition was terminated and the deposition of Rome did not proceed at all. All of that occurred against the backdrop of this Court's ruling made one day – less than 24 hours earlier. Despite the Court's previous pleas with counsel to comport themselves in accordance with the code of professional responsibility and comport themselves with regard to advancing this cause and to realize that we were dealing with a contempt that the Court had already found the defendant to be in, Rome has done nothing throughout this litigation but delay, delay, delay. Time and time again Rome has not done what this Court has ordered. Time and time again sanctions have been imposed by this Court and the federal court. And time and time again those sanctions have not worked.

(b) Specific Orders Regarding the Motion for Default

As a result of the above facts, this Court finds the State's motion default is well taken.

It is **THEREFORE ORDERED** that the sanction of default of judgment is hereby **GRANTED**, and a default judgment will be entered against Rome under the State's second amended complaint and under the State's pending civil contempt motion.;

It is further **ORDERED** that all documents produced by Rome to date in this litigation are deemed admissible into evidence for any purpose at any hearing to be held in this case, including hearings on the issue of penalty assessments for Rome's contempt of court for its violations of the Tennessee Consumer Protection Act of 1977. All records obtained by the State

from the Gwinnett County Court in Lawrenceville, Georgia, or from other sources such as the state of California, are also deemed admissible into evidence.

It is further **ORDERED** that the Court is not making any rulings as to the issue of civil contempt or sanctions as to Rome's present and chief executive officer, Ronald M. Wilson, individually, but that such matter may be separately pursued by the State upon proper notice of the same to Mr. Wilson and his counsel;

It is further **ORDERED** that all costs and attorney's fees incurred by the State in attempting to depose Rome and Mr. Wilson to date and pursuing this motion for sanctions against Rome and Wilson are awarded to the State.

It is further **ORDERED** that Mr. Wilson is ordered to immediately appear in the State of Tennessee at the State's Nashville offices to conclude his deposition. All subjects are open to inquiry at that deposition.

2. **MOTION TO COMPEL DEPOSITION OF GUY VAN POOL**

With respect to the State's Motion to Compel Deposition of Guy Van Pool, the Court **GRANTS** such motion. Given Mr. Van Pool's apparent health situation, the Court will not compel Mr. Van Pool to travel to the State of Tennessee, and it is **ORDERED** that his deposition may take place in the State of Georgia.

It is further **ORDERED** that the Court will not require Mr. Van Pool to undergo an independent medical examination, and the State's alternative request for such relief is **DENIED**. However, Rome is hereby **ORDERED** to provide to the State of Tennessee whatever medical Rome or Mr. Van Pool can supply if it is necessary to determine whether or not Mr. Van Pool is, indeed, capable of giving his deposition;

It is further **ORDERED** that the State may depose Mr. Van Pool without proceeding under a formal commissioning process for the taking of out-of-state depositions.

3. **STATE'S MOTION TO CLARIFY PREMISES INSPECTION**

With respect to the State's Motion to Clarify the Issue of Premises Inspection, the Court **GRANTS** such motion, and specifically **ORDERS** that the State's inspection of Rome's offices in Lawrenceville, Georgia will take place during normal business hours.

4. **ROME'S MOTION TO LIMIT EXAMINATION OF RONALD M. WILSON**

With respect to Rome's Motion to Limit the Examination of Ronald M. Wilson, such motion is hereby **DENIED**.

5. **ROME'S MOTION TO RECONSIDER PORTIONS OF JULY 2, 2008 ORDER OR FOR PERMISSION TO SEEK INTERLOCUTORY APPEAL**

With respect to Rome's Motion to Reconsider Portions of the July 2, 2008 Order or for Permission to Seek Interlocutory Appeal, such motion is hereby **DENIED**.

6. **OTHER MATTERS**

(a) During the August 11, 2008 hearing, Rome moved for permission to file all discovery that had not been filed to date due to the local rules. The Court **GRANTS** Rome's motion and **ORDERS** that Rome may file all discovery not previously filed with the Circuit Court clerk.

(b) During the August 11 hearing and after this Court's orders on the previous issues, Rome moved for permission to issue new discovery to the State seeking information regarding damages and penalties to be pursued by the State at the August 26, 2008 hearing. The Court

finds that in light of the default entered in this matter, no additional discovery on the part of the defense is necessary nor should the Court allow it. To the extent that the Defendant is requesting now, having conducted itself in what the Court found to be an egregious manner, now ask to take discovery, which the Court views that simply as another attempt to delay proceedings in this matter, the Court therefore **DENIES** Rome's request for discovery related to damages and penalties sought by the State.

(c) The Court also clarifies its May 2, 2008 ruling concerning the term "final hearing." Specifically the Court **ORDERS** that in using the term "final hearing," the Court was referring to the contempt hearing which is scheduled for August 26, 2008.

(d) The Court also orders that the State, at its election, may proceed at the August 26, 2008 hearing to present evidence as to what sanctions the Court should impose against Rome. The State may also proceed on the damage hearing, as the Court has rendered a default judgment on the underlying case against Rome.

ENTER, this the 5th day of September, 2008.



ROSS H. HICKS, CIRCUIT JUDGE

SUBMITTED FOR APPROVAL:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel for all parties at interest in this case by email, facsimile, and/or by placing a true and exact copy of this pleading in the United States Mail, with sufficient postage, and addressed to such counsel at his or her office as indicated below:

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This the 5th day of Sept, 2008.

CHAMBLISS, BAHNER & STOPHEL, P.C.

By: Hugh Moore by permission of counsel